IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 67 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DILIP RAMDAVAL SHARMA

Versus

STATE OF GUJARAT

Appearance:

MR NK MAJMUDAR for Petitioner

Mr S P Dave, APP for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 04/05/2001

ORAL JUDGEMENT

The petitioner above-named, has preferred this Revision Application under Section 397 of the Criminal Procedure Code, 1973 (for short, 'the Code'), challenging the order dated 8.12.2000 recorded by the learned

Judicial Magistrate First Class, Valiya, District Bharuch in Sagbara police station C.R. No.193/2000 under which the learned Magistrate dismissed the said application of the present petitioner for interim custody of muddamal tempo no.MH 18-K-266. It appears from the record that a FIR was filed before the aforesaid police station on 20.10.2000 against two accused named in the FIR for offence punishable under the Bombay Prohibition Act alleging that 4320 bottles of foreign liquor were being carried illegally without pass or permission in the tempo in question by the said accused person named in the FIR. It appears that the petitioner had submitted application before the learned Magistrate for interim custody of the said vehicle. Police report was sought and it was obtained and thereafter, the learned Magistrate dismissed the said application of the present petitioner. Therefore, the present Revision has been filed. It is contended on behalf of the petitioners that the order of the learned Magistrate is illegal and the police report has not been properly appreciated by him while dismissing the said application. That therefore, this Revision petition be allowed and the order of the learned Magistrate be set aside and the interim custody of the tempo may be given to the petitioner on such terms and conditions as deemed proper by this Court.

On receiving the petition, Rule was issued. Mr S P Dave, learned APP appears on behalf of respondent and waives service. I have heard the learned Advocates for the parties and have perused the papers.

2. So far as the ownership of the muddamal vehicle is concerned, there is no serious dispute that the petitioner is the owner of the aforesaid vehicle.

3. With respect to user, the learned advocate for the petitioner states that the petitioner is prepared to furnish undertaking to the effect that the vehicle will not be used in absence of the petitioner and the petitioner shall always accompany the vehicle, so that it may not be used for any illegal purpose. He is also prepared to furnish undertaking of the petitioner that the vehicle in question will not be used for any illegal purpose and it will not be transferred in any manner whatsoever. That the petitioner is further prepared to furnish surety to the tune of an amount of Rs.6 lakhs if the custody is given during the pendency of the proceedings in question. Looking to the facts and circumstances of the case and having regard to the fact that the petitioner is prepared to be with the vehicle all throughout, it can be said that the vehicle cannot be

used for any other illegal purpose and even if it is used, the petitioner will not be able to take legal defence that it was so used without his information or knowledge. Moreover, when the transfer of vehicle is prohibited, then the petitioner will have to keep the vehicle in his possession and will have to produce before the police agency or the court concerned as and when required. If reasonable restrictions and conditions are imposed, then in that case, there is nothing wrong if the vehicle is returned to the owner by way of interim custody. In that view of the matter, I am of the view that it cannot be said that the learned Magistrate did consider the aforesaid facts while dismissing the application of the petitioner. To that extent, the order of the learned Magistrate cannot be said to be legal and valid under the aforesaid facts and circumstances.

4. This Revision Application is accordingly allowed. The order passed by the learned Magistrate and impugned in this Revision is set aside. The vehicle in question referred to hereinabove shall be handed over to the petitioner by way of interim order till disposal of the criminal case in question on following conditions:

(i) The petitioner shall submit solvent surety in a sum of Rs.6 lakhs before the learned Magistrate to his satisfaction with P.R. of like amount,

(ii) The petitioner shall not transfer title or position of the said vehicle till final disposal of the aforesaid criminal case,

(iii) The petitioner shall always accompany the vehicle as and when it is put to motion,

(iv) The petitioner shall produce the said vehicle either before the police or before the court concerned as and when so required,

(v) The petitioner shall not use the said vehicle for any illegal purpose.

5. The concerned department shall be at liberty to undertake proceedings for the confiscation of the vehicle and in that case, the petitioner shall produce the said vehicle before the Dy.Commissioner or Commissioner, as the case may be, of Prohibition and Excise, as and when the petitioner may be so required. The original R C book

shall be presented before the Magistrate and shall be at liberty to keep xerox copy of the same with him. The learned Magistrate shall keep it in the custody of the Nazir as a measure of safe custody.

This Revision Application is allowed to the aforesaid extent. Rule is made absolute accordingly. D.S. permitted.

4.5.2001 [D P Buch, J.]
msp